



Impact Justice, PREA Resource Center
1342 Florida Avenue NW
Washington, DC 20009

June 27, 2024

re: auditor noncompliance with audit requirements, abbreviated report, Diboll Unit

To the PREA Resource Center:

Trans Pride Initiative (TPI) is filing an objection to the acceptance of the audit report for the Texas Department of Criminal Justice (TDCJ) Diboll Unit conducted by auditor Cynthia Swier and Corrections Consulting Services, LLC, formerly PREA Auditors of America. TPI has been working with incarcerated persons since 2013, mainly trans and queer persons in the Texas prison system.¹ We believe that for a number of reasons this audit fails to meet the spirit or letter of audit requirements.

The onsite audit was conducted from March 6 through March 8, 2024. The final audit report was submitted April 21, 2024.

TPI would like to stress that deficiencies discussed in this report document failures to comply with the Auditor Certification Agreement, including at a minimum General Responsibilities I.b. and I.c.; Auditor Certification Requirements V.b. and V.g.; and the PREA Audit Methodology VI.a. The Auditor Handbook states:

Auditors who do not satisfy their certification requirements are subject to remedial or disciplinary action, up to and including suspension or decertification. Full details regarding the PREA Audit Oversight Program are provided in Section VII of this Handbook.

The deficiencies we have identified, which may not represent a complete list of audit deficiencies, are provided in the following pages of this letter.

TPI files detailed objections to PREA audits where we have sufficient information to understand operations at a specific facility. For some facilities, we have limited information, and for such facilities, we may submit an abbreviated report identifying inaccuracies and other problems in a PREA audit. This letter represents an abbreviated objection letter dealing primarily with factual inaccuracies in an audit report.

1. PREA identifies LGBTI as lesbian, gay, bisexual, transgender, and intersex persons. TPI is much more affirming and comprehensive in our understanding of vulnerabilities and marginalization, and as such we include under the LGBTI umbrella all non-cisgender non-hetero-normative persons. We believe this is the only interpretation consistent with the spirit of PREA.



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Summary of Deficiencies

TPI has documented a number of inaccuracies and deficiencies with the basic and general information provided in this audit report. The most significant problems include:

- The auditor failed to complete the required minimum number of targeted interviews.
- The auditor failed to complete the required minimum number of targeted interviews with persons who reported prior sexual victimization, although there apparently were sufficient persons meeting target criteria available.
- The auditor failed to complete the required minimum number of targeted interviews with persons who had been placed in segregated housing, and appears to have failed to appropriately document persons housed at the facility who had been placed in segregated housing.
- The auditor appears to have not appropriately identified the number of allegations of sexual abuse against staff.

TPI has documented a number of inaccuracies and deficiencies with the assessment of compliance with PREA standards in this report. The most significant problems identified include:

- PREA § 115.21: The auditor does not adequately address why the documented allegation against staff for sexual abuse did not include a SANE exam.
- PREA § 115.43: The auditor makes contradictory and confusing statements about persons being housed in protective custody, indicating compliance with PREA § 115.43 was not adequately assessed.
- PREA § 115.68: The auditor makes problematic statements about this standard, indicating possible manipulation of “voluntary” and “involuntary” determinations. The auditor also indicates a failure to appropriately address PREA § 115.68 (and possibly 115.43) compliance for persons in what might be considered involuntary protective custody longer than 24 hours but less than 30 days.



- PREA § 115.71: The auditor fails to address the lack of forensic medical evidence collection in the case of a sexual abuse allegation against a staff member, indicating compliance with this standard should be questioned.

Request for Action

TPI requests that the following actions be taken:

- That this audit report be considered deficient, and not be considered to support of a state submission for PREA compliance for the purpose of PREA § 115.501 certification of compliance.
- That Diboll Unit be required to conduct a subsequent audit to address deficiencies in the audit discussed in this letter.

Discussion of Audit Deficiencies

General Data and Report Deficiencies

The DOJ has provided guidelines to use person first language such as persons in confinement or confined person. This is discussed in the 2022 Auditor Handbook, and the handbook notes that the PREA Management Office and the PREA Resource Center “are shifting the way we identify people who are incarcerated by using person-first language.” This auditor ignores this shift by continuing to use terms like “offender” throughout this report. In fact, the word “offender” is used 95 times by the auditor. There is no excuse for every new document completed under the aegis of the PREA compliance system to not follow person-first practices.

Table 1 provides population characteristics as provided by the audit, the minimum required number of targeted interviews, and the number of interviews conducted during the audit.

As can be seen in Table 1, the auditor failed to complete the required number of targeted interviews. The Auditor Handbook is clear on page 71 that:

If an auditor is unable to identify an individual from one of the targeted populations (e.g., the facility does not house youths under 18) or an individual belonging to a targeted population does not wish to participate in an interview, the auditor must select interviewees from other targeted populations in order to meet the minimum number of targeted interviews. If the auditor is unable to interview an adequate number of individuals to meet the minimum threshold for targeted interviews, they should then conduct additional random interviews of persons confined in the facility in order to comply with the overall minimum number of interviews.

The auditor clearly had enough persons meeting target criteria, yet only conducted one interview with a person identifying as lesbian, gay, or bisexual; and, amazingly for a PREA audit, only interviewed 1 person out of the required 2 and available 12 persons who had reported prior sexual victimization, that itself also a serious deficiency in the audit. The auditor provided no information about why the target was not met in audit entry 68.



Table 1. Population Characteristics and Interviews

Population Characteristic	Persons Present	Interviews Required	Interviews Completed
36/53/58 — Total housed at unit	509	Random: 15 Targeted: 15	Random: 22 Targeted: 8
38/60 — Persons with a physical disability	0	at least: 1	0
39/61 — Persons with cognitive or functional disability	0	at least: 1	0
40/62 — Persons blind or visually impaired	0	at least: 1	0
41/63 — Persons deaf or hard-of-hearing	2	at least: 1	2
42/64 — Persons Limited English Proficient	48	at least: 1	4
43/65 — Persons identifying as lesbian, gay, or bisexual	11	at least: 1	1
44/66 — Persons identifying as transgender or intersex	0	at least: 1	0
45/67 — Persons who reported sexual abuse in facility	0	at least: 3	0
46/68 — Persons who reported prior sexual victimization	12	at least: 2	1
47/69 — Persons placed in segregated housing for risk of sexual victimization	0	at least: 1	0

The auditor also states in the discussion of PREA § 115.43(c) and (d) that a number of persons had been held segregated housing (see the discussion of this standard below for more details), directly contradicting information provided in audit entries 47 and 69. If all the persons held in segregated housing had been transferred by the time of the onsite audit, then the auditor failed to provide that necessary information in audit entry 69.

Table 2 presents the compiled data concerning sexual violence, investigations, and reporting requirements. Under criminal investigations, the entry “no action (inferred)” is listed thus because the audit report does not provide a number for allegations referred for criminal investigation where no action is taken; this value must be inferred from the other categories. In Table 2, column “Qty (92-97)” provides the data from audit entries 92-97; column “115.21” provides information on forensic exams required to be offered under PREA § 115.21; “115.43 / 115.68” provides data on persons separated for risk and post-allegation protective custody; “115.73” provides data on reporting the results of investigations to incarcerated persons; and “115.86” concerns incident reviews completed.

Table 2. Sexual Violence Investigations and Outcomes

	Qty (92-97)	115.21	115.43 / 115.68	115.73	115.86
Sexual Abuse by Staff					
Allegations	1	0	0		
Criminal Investigations	0	0	0		
Ongoing	0	0	0	-	-
No Action	0	0	0	-	-



Table 2. Sexual Violence Investigations and Outcomes

	Qty (92-97)	115.21	115.43 / 115.68	115.73	115.86
Referred	0	0	0	-	-
Indicted	0	0	0	-	-
Convicted	0	0	0	-	-
Acquitted	0	0	0	-	-
Administrative Investigation	0	0	0		
Ongoing	0	0	0	0	0
Unfounded	0	0	0	0	NA
Unsubstantiated	1	0	0	1	1
Substantiated	0	0	0	0	0
Both Investigations	0	0	0		

Sexual Abuse by Incarcerated Persons

Allegations	0	0	0		
Criminal Investigations	0	0	0		
Ongoing	0	0	0	-	-
No Action	0	0	0	-	-
Referred	0	0	0	-	-
Indicted	0	0	0	-	-
Convicted	0	0	0	-	-
Acquitted	0	0	0	-	-
Administrative Investigation	0	0	0		
Ongoing	0	0	0	-	-
Unfounded	0	0	0	-	NA
Unsubstantiated	0	0	0	-	-
Substantiated	0	0	0	-	-
Both Investigations	0	0	0		

Sexual Harassment by Staff

Allegations	0	NA	0		
Criminal Investigations	0	NA	0	NA	NA
Ongoing	0	NA	0	NA	NA
No Action	0	NA	0	NA	NA
Referred	0	NA	0	NA	NA
Indicted	0	NA	0	NA	NA
Convicted	0	NA	0	NA	NA
Acquitted	0	NA	0	NA	NA
Administrative Investigation	0	NA	0	NA	NA
Ongoing	0	NA	0	NA	NA
Unfounded	0	NA	0	NA	NA
Unsubstantiated	0	NA	0	NA	NA
Substantiated	0	NA	0	NA	NA
Both Investigations	0	NA	0	NA	NA

Sexual Harassment by Incarcerated Persons

Allegations	0	NA	0		
Criminal Investigations	0	NA	0	NA	NA
Ongoing	0	NA	0	NA	NA
No Action	0	NA	0	NA	NA
Referred	0	NA	0	NA	NA



Table 2. Sexual Violence Investigations and Outcomes

	Qty (92-97)	115.21	115.43 / 115.68	115.73	115.86
Indicted	0	NA	0	NA	NA
Convicted	0	NA	0	NA	NA
Acquitted	0	NA	0	NA	NA
Administrative Investigation	0	NA	0	NA	NA
Ongoing	0	NA	0	NA	NA
Unfounded	0	NA	0	NA	NA
Unsubstantiated	0	NA	0	NA	NA
Substantiated	0	NA	0	NA	NA
Both Investigations	0	NA	0	NA	NA

Some problems with this data become apparent when compiled in Table 2 format. Although there was one allegations of sexual abuse made against staff, the auditor documented 0 administrative investigations of sexual abuse by staff, although elsewhere reporting 1 administrative investigation was unsubstantiated. Although that allegation of sexual abuse was also noted to have not been investigated criminally, audit entry 104 states that the auditor reviewed criminal investigation files, indicating it was investigated criminally. Also, in the discussion of PREA § 115.43, the auditor refers to reviewing housing assignments for multiple persons alleging sexual abuse, enough that “many” were moved to alternate housing, indicating there were multiple allegations made but not reported in this audit. And last, the discussion of PREA § 115.76 apparently mentions a second staff member who was reported to law enforcement for something related to sexual abuse, but it is not clear what. Inconsistencies such as these show a lack of attention to detail, and a performative audit to provide compliance, not a responsible audit to identify issues that need to be addressed. Where there is only 1 file to review and one allegations made, certainly this data should be documented correctly.

PREA Compliance Assessment Issues

PREA § 115.15, Cross-Gender Viewing and Searches

TPI has many concerns over PREA auditor evaluations of compliance with this standard, but in this abbreviated report, we are only discussing the most blatant errors. In the discussion of PREA § 115.15(a), the auditor notes that “[t]ransgender [incarcerated persons] are searched last and searches are conducted with privacy barriers,” but the auditor claimed that there were no transgender persons housed at Diboll Unit. In the discussion of PREA § 115.15(e) the auditor states that “[i]nterviews with transgender [incarcerated persons] indicated that they had never been searched for the sole purpose of determining their genital status,” but the auditor claimed that there were no transgender persons housed at Diboll Unit. Such misstatements indicate the audit report was completed with copy-and-paste entries rather than entries actually reflecting a competent audit. This should cause one to question what other inaccuracies have been allowed in this report that may impact compliance assessment.



PREA § 115.21, Evidence Protocol and Forensic Medical Examinations

PREA § 115.21 requires that all incarcerated survivors of sexual abuse be offered access to forensic medical exams. Only 1 allegation of sexual abuse was documented in this PREA audit, but the discussion of PREA § 115.21(c) states that no forensic exams were conducted. This audit report is deficient in that it does not address why no forensic evidence collection was undertaken to investigate the allegation against a staff person. Without an explanation of this omission—or specifically that access to a forensic medical exam was offered—it cannot be determined whether Diboll Unit is in compliance with this standard or not.

PREA § 115.43, Protective Custody

In the discussion of PREA § 115.43(a) and (b), the auditor states that no incarcerated persons were placed in involuntary segregated housing in the past 12 months, and specifically states that this was for either risk or sexual victimization or for post-allegation separation, pertinent also to PREA § 115.68.

However, in PREA § 115.43(c), the auditor claims that “a review of the [incarcerated person’s] housing assignment for those who have alleged sexual abuse indicates that they were not held in restrictive housing status for 30 days. Many of these [incarcerated persons] were moved to alternate housing within a few days of placement in restrictive housing. The interview with the Warden indicated that this is standard practice.”

This appears to contradict staff claims related by the auditor, and it appears to clarify that 1) some persons were held in segregated housing or protective custody (contradicting claims in audit entries 47 and 69), just not involuntarily for more than 30 days; and 2) because it refers to “many of these” persons being moved within a few days, that there was more than 1 allegation of sexual abuse or sexual harassment at Diboll Unit in the last 12 months.

The auditor appears to clearly state that during the last 12 months, no persons were placed in involuntary segregated housing, but due to the failure to appropriately assess the number of persons placed in segregated housing, we question whether it is accurate that none of these placements were involuntary.

Based on this discussion, it appears prudent to question compliance with PREA § 115.43 (see also PREA § 115.68 below).

PREA § 115.68, Post-Allegation Protective Custody

In the discussion of this standard, the auditor makes the problematic statement that “any use of restrictive housing to protect an [incarcerated person] who alleged to have suffered sexual abuse will not be involuntary unless an assessment of all available alternatives has been made and no alternative is available.” This appears to mean that any use of restrictive housing is considered “voluntary” if no assessment is made or if alternatives are available. In other words,



if assignment to involuntary housing would mean noncompliance with PREA §§ 115.43 and 115.68, then the assignment is considered “voluntary.”

The auditor also states that no persons incarcerated at Diboll Unit were “placed in involuntarily [*sic*] restrictive housing for zero to 24 hours or longer than 30 days,” indicating some persons were housed in involuntary protective custody for more than 24 hours. This wording appears contrived, and does not fully support adequate assessment and compliance.

Based on this discussion, it appears that Diboll Unit is not in compliance with PREA § 115.68, specifically that persons cannot be held in involuntary protective custody for more than 24 hours unless an assessment of available alternate means of separation is conducted; that regardless of the length of time held in involuntary protective custody the opportunities that are limited, duration of the limitations, and reasons for the limitations must be documented; and that persons held in involuntary protective custody shall clearly document the basis for concern and reason there are no alternatives.

PREA § 115.71, Agency Investigations

In the discussion of PREA § 115.71(c), the auditor reports that when there is a sexual abuse allegation, the investigator “would require the victim to be taken for a ‘rape kit,’” but does not address why no forensic evidence was collected in the investigation of the one documented allegation of sexual abuse made against a staff person. This indicates deficiency in the audit of compliance with PREA § 115.71(c).

The lack of a SANE exam for the one documented allegation of sexual abuse, perpetrated by staff no less, would seem to be an obvious issue to address in an appropriate audit of compliance with the PREA § 115.71 standard. Based on the failure to address this issue, TPI asserts that it cannot be determined whether or not Diboll Unit complies with this standard based on the information in this audit report.

PREA § 115.76, Disciplinary Sanctions for Staff

In the discussion of PREA § 115.76(d), the auditor reports that “there were no staff members who violated the sexual abuse and sexual harassment policies,” but also that “there has been one (1) staff member reported to law enforcement.” That it was included in the discussion of this standard indicates at least one additional PREA-related incident by a staff member that was not elsewhere noted in this audit report. This does not necessarily indicate noncompliance with PREA § 115.76, but does call into question other data provided by the facility and this auditor.

Conclusion

TPI has documented a number of inaccuracies and deficiencies with the basic and general information provided in this audit report. The most significant problems include:

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I hope that these issues can be addressed in the interest of increasing the safety of all trans and queer persons, and in the interest of more full compliance with PREA standards requiring “zero tolerance toward all forms of sexual abuse and sexual harassment” and legitimate instead of specious efforts to prevent, detect, and respond to such conduct.



Sincerely,

Nell Gaither, President
Pronouns: she/her/hers
Trans Pride Initiative

cc: Department of Justice, PREA Management Office
TDCJ CEO Bryan Collier
TDCJ PREA Ombudsman
Diboll Unit Senior Warden Tracy Hutto
Diboll Unit PREA Manager Mary Morgan